

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)

BRYAN LAWRENCE HENRY, M.D.)

File No. 800-2014-010647

**Physician's and Surgeon's)
Certificate No. A 37110)**

Respondent)

DECISION AND ORDER

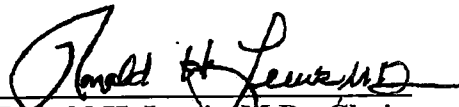
The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on December 7, 2017.

IT IS SO ORDERED November 7, 2017.

MEDICAL BOARD OF CALIFORNIA

By: _____


Ronald H. Lewis, M.D., Chair
Panel A

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LYNNE K. DOMBROWSKI
Deputy Attorney General
4 State Bar No. 128080
455 Golden Gate Avenue, Suite 11000
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2014-010647

12 **BRYAN LAWRENCE HENRY, M.D.**

OAH No. 2017060610

13 St. Helena Women's Center
14 821 S. St. Helena Highway
St. Helena, CA 94574

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Physician's and Surgeon's Certificate
16 No. A37110

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Lynne K.
25 Dombrowski, Deputy Attorney General.

26 2. Respondent Bryan Lawrence Henry, M.D. (Respondent) is represented in this
27 proceeding by attorney Mr. Michael Gallert, whose address is: Leonard & Lyde, 1600 Humboldt
28 Road, Suite 1, Chico, CA 95928.

1 3. On or about July 20, 1981, the Board issued Physician's and Surgeon's Certificate No.
2 A37110 to Bryan Lawrence Henry, M.D. (Respondent). The Physician's and Surgeon's
3 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
4 No. 800-2014-010647, and will expire on November 30, 2018, unless renewed.

5 JURISDICTION

6 4. Accusation No. 800-2014-010647 was filed before the Board, and is currently
7 pending against Respondent. The Accusation and all other statutorily required documents were
8 properly served on Respondent on November 28, 2016. Respondent timely filed his Notice of
9 Defense contesting the Accusation.

10 5. A copy of Accusation No. 800-2014-010647 is attached as Exhibit A and is
11 incorporated herein by reference.

12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2014-010647. Respondent has also carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
16 Disciplinary Order.

17 7. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 CULPABILITY

26 9. Respondent understands and agrees that the charges and allegations in Accusation
27 No. 800-2014-010647, if proven at hearing, constitute cause for imposing discipline upon his
28 license. For the purposes of resolving the Accusation without the expense and uncertainty of

1 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
2 basis for the charges in the Accusation and that those charges could constitute a cause for
3 discipline.

4 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
5 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
6 Disciplinary Order below.

7 CONTINGENCY

8 11. This stipulation shall be subject to approval by the Medical Board of California.
9 Respondent understands and agrees that counsel for Complainant and the staff of the Medical
10 Board of California may communicate directly with the Board regarding this stipulation and
11 settlement, without notice to or participation by Respondent or his counsel. By signing the
12 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
16 action between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
19 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile
20 signatures thereto, shall have the same force and effect as the originals.

21 13. In consideration of the foregoing admissions and stipulations, the parties agree that
22 the Board may, without further notice or formal proceeding, issue and enter the following
23 Disciplinary Order:

24 ///

25 ///

26 ///

27 ///

28 ///

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A37110 issued to Respondent Bryan Lawrence Henry, M.D. is publicly reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This public reprimand, which is issued in connection with Respondent's conduct as set forth in Accusation No. 800-2014-010647, is as follows:

You departed from the standard of care with regard to the care and treatment of Patient NJ in 2013, pursuant to Business and Professions Code sections 2234(c) and 2266.

B. EDUCATION COURSE.

Within one year of the effective date of this Decision, Respondent shall submit to the Board, or its designee, proof of attendance at educational program(s) or course(s) which shall be for no less than 25 hours. The educational program(s) or course(s) shall be Category I certified and shall be regarding the areas of high risk pregnancies and fetal heart monitoring. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Failure to successfully complete the educational program(s) or course(s) outlined above shall constitute unprofessional conduct and grounds for further disciplinary action.

C. MEDICAL RECORD KEEPING COURSE.

Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense

1 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
2 licensure.

3 A medical record keeping course taken after the acts that gave rise to the charges in the
4 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board
5 or its designee, be accepted towards the fulfillment of this condition if the course would have
6 been approved by the Board or its designee had the course been taken after the effective date of
7 this Decision.

8 Respondent shall submit a certification of successful completion to the Board or its
9 designee not later than 15 calendar days after successfully completing the course, or not later than
10 15 calendar days after the effective date of the Decision, whichever is later. Failure to
11 successfully complete the educational program or course outlined above shall constitute
12 unprofessional conduct and grounds for further disciplinary action.

13 ACCEPTANCE

14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney, Mr. Michael Gallert. I understand the stipulation and the effect it
16 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Medical Board of California. I fully understand that any failure to
19 comply with the terms and conditions of the Disciplinary Order set forth above shall constitute
20 unprofessional conduct and that my Physician's and Surgeon's Certificate will be subject to
21 further discipline.

22
23 DATED: 9/10/2017

Bryan Lawrence Henry
BRYAN LAWRENCE HENRY, M.D.
Respondent

1 I have read and fully discussed with Respondent Bryan Lawrence Henry, M.D. the terms
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
3 Order. I approve its form and content.

4
5 DATED:

9/11/17

Michael Gallert
MICHAEL GALLERT
Attorney for Respondent

6
7
8 ENDORSEMENT

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
10 submitted for consideration by the Medical Board of California.

11
12 DATED:

9/11/2017

Respectfully submitted,

14 XAVIER BECERRA
Attorney General of California
15 JANE ZACK SIMON
Supervising Deputy Attorney General

16 *Lynne K. Dombrowski*
17 LYNNE K. DOMBROWSKI
18 Deputy Attorney General
Attorneys for Complainant

19
20
21 SF2016201816

Exhibit A

Accusation No. 800-2014-010647

1 KAMALA D. HARRIS
2 Attorney General of California
3 JANE ZACK SIMON
4 Supervising Deputy Attorney General
5 LYNNE K. DOMBROWSKI
6 Deputy Attorney General
7 State Bar No. 128080
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11 Facsimile: (415) 703-5480
12 E-mail: Lynne.Dombrowski@doj.ca.gov
13 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 28, 2016
BY [Signature] ANALYST

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2014-010647

13 **Bryan Lawrence Henry, M.D.**
14 St. Helena Women's Center
15 821 S. St. Helena Hwy
16 St. Helena, CA 94574

ACCUSATION

17 Physician's and Surgeon's Certificate
18 No. A37110,

19 Respondent.

20 Complainant alleges:

PARTIES

- 21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).
- 24 2. On or about July 20, 1981, the Medical Board issued Physician's and Surgeon's
25 Certificate Number A37110 to Bryan Lawrence Henry, M.D. (Respondent). The Physician's and
26 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein
27 and will expire on November 30, 2018, unless renewed.

3. On or about December 26, 2014, the Medical Board received an 801.01 Report of Settlement from insurer The Doctors Company that a civil case had been settled on behalf of Respondent for \$117, 500 related to a caesarean section with an infant son who died at birth.

JURISDICTION

4. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

“(a).Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

“(b) Gross negligence.

“(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

“(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

“(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

“(d) Incompetence.

1 “(e) The commission of any act involving dishonesty or corruption which is substantially
2 related to the qualifications, functions, or duties of a physician and surgeon.

3 “(f) Any action or conduct which would have warranted the denial of a certificate.

4 “(g) The practice of medicine from this state into another state or country without meeting
5 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
6 apply to this subdivision. This subdivision shall become operative upon the implementation of the
7 proposed registration program described in Section 2052.5.

8 — “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
9 participate in an interview by the board. This subdivision shall only apply to a certificate holder
10 who is the subject of an investigation by the board.”

11 7. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
12 adequate and accurate records relating to the provision of services to their patients constitutes
13 unprofessional conduct.”

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct: Repeated Negligent Acts)**

16 8. Respondent Bryan Lawrence Henry, M.D. is subject to disciplinary action under
17 section 2234(c) in that Respondent’s overall conduct, acts and/or omissions, with regard to patient
18 NJ constitutes repeated negligent acts, as more fully described herein below.

19 9. In or about December 2012, Respondent first saw patient NJ, who was a 26-year-old
20 female, primigravida at approximately 6 weeks of pregnancy. Respondent noted that the patient
21 had issues of hypertension, obesity, perigestational sac hematoma (resolved), and size greater than
22 dates.

23 10. Respondent saw the patient for a total of 18 pre-natal visits and the patient appeared
24 compliant with pre-natal care. The patient was followed with twice-weekly fetal non-stress tests
25 (NST) during the last few weeks of pregnancy.

26 11. At a July 11, 2013 visit, Respondent noted on the patient’s chart that he had
27 “discussed delivery” but there was no further written explanation of what was discussed.
28

1 12. On August 3, 2013 at about 2200 hours, the patient presented to the hospital, St.
2 Helena Labor and Delivery, in spontaneous labor. The patient reported that she had been having
3 contractions since about noon and that they had become stronger and more frequent.

4 13. A fetal monitor was placed at approximately 2205 hours. The monitor strips reveal a
5 baseline fetal heart rate of 180, consistent with tachycardia, with minimal to moderate variability
6 with no accelerations or decelerations. The patient was contracting every 1-2 minutes. The
7 patient's vital signs were normal. The initial cervical exam revealed cervical dilation of 2 cm,
8 cervical effacement 50%, +3 station, and firm cervical consistency.

9 14. Respondent was called by the nurse at 2230 hours on August 3, 2013. The nurse's
10 notes indicate: "high baseline of 180, moderate variability, 10 x 10 accels after turning patient on
11 side, afebrile. Orders for recheck in 2 hours, push fluids, ua. If no cervical change discharge
12 home." The nurse recorded that the patient was allowed off the monitor for about 30 minutes,
13 between 2307 and 2333 hours.

14 15. The fetal heart tracing never improved. Tachycardia persisted and there were no
15 accelerations. On August 4, 2013 at 0215 hours, the nurse's notes indicate that there were periods
16 of variable decelerations, with prolonged deceleration to 50 bpm and questionable early/late
17 decelerations. The nurse administered oxygen by face mask and the patient was given Nubain for
18 pain.

19 16. On August 4, 2013 at 0349 hours, there was another apparent prolonged deceleration
20 with no fetal tracing during this time and the nurse noted that the patient was turned to her right
21 side after variable deceleration. Uterine contractions were also difficult to trace. There is no
22 documentation in the records that Respondent was contacted or that a request was made for a fetal
23 scalp electrode/intrauterine pressure catheter at that time.

24 17. On August 4, 2013 at around 0400 hours, recurrent variable decelerations are noted.
25 At 0430 hours, the patient was checked and a cervical exam showed cervical dilation of 7 cm.,
26 90% cervical effacement, and +1 station. Respondent was called and reported that he was on his
27 way to the hospital. An epidural was requested and anesthesia was paged.
28

1 18. Respondent was reported to be at the patient's bedside at about 0452 hours on August
2 4, 2013. Respondent's cervical examination noted cervical dilation of 8 cm., 100% cervical
3 effacement, and +1 station. The membranes were ruptured, with a finding of moderate
4 meconium.

5 19. There is no recording of fetal heart rate for approximately 10 minutes, from 0453
6 hours until 0504 hours, at which time a fetal scalp electrode was placed. Also at 0504 hours, an
7 order was given for a caesarean section and the patient was given terbutaline.

8 20. The patient was taken off fetal monitors at 0535 hours and was on the operating table
9 at 0540. The record states that, at 0600 hours, it was difficult to Doppler and no fetal heart
10 tracing was present.

11 21. The records for 0605 and 0610 hours reflect that repeated attempts were made but
12 were unsuccessful for an epidural spinal insertion and for intermittent Doppler attempts for the
13 fetal heart rate. The note at 0610 states: "attempt to Doppler FHT none audible."

14 22. Although there was no documented fetal heart rate for more than 35 minutes,
15 Respondent proceeded with a caesarean section on NJ.

16 23. At about 0616 hours on August 4, 2013, Respondent delivered a stillborn male fetus
17 with Apgars of 0/0/0. Resuscitation efforts were attempted but were unsuccessful. There was a
18 nuchal, arm and leg cord. No other abnormalities were noted in the delivery notes.

19 24. Respondent's overall conduct, acts and/or omissions, with regard to patient NJ, as set
20 forth herein, constitutes unprofessional conduct through repeated negligent acts, pursuant to
21 Business and Professions Code Sections 2234 subdivision (c), and is therefore subject to
22 disciplinary action. More specifically, Respondent is guilty of unprofessional conduct with regard
23 to patient NJ as follows:

24 a. Respondent failed to perform continuous fetal monitoring while preparing for the
25 cesarean section.

26 b. Once the fetal heart rate could not be obtained, Respondent did not confirm a
27 viable fetus before proceeding with the caesarean section.

1 c. Respondent did not document in the records findings to help explain the
2 intrapartum fetal demise.

3 d. Respondent failed to document that the patient was counseled about the risks of
4 obesity and excessive weight gain during pregnancy. There was also no documentation in the
5 records that issues regarding anesthesia were discussed with the patient prior to her admission in
6 labor.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct: Failure to Maintain Adequate/Accurate Medical Records)**


9 25. Respondent Bryan Lawrence Henry, M.D. is subject to disciplinary action for
10 unprofessional conduct under section 2266 for failure to maintain adequate and accurate records
11 relating to the provision of services to patient NJ, as alleged in paragraphs 9 through 24, which
12 are incorporated herein by reference as if fully set forth.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Medical Board of California issue a decision:

- 16 1. Revoking or suspending Physician's and Surgeon's Certificate Number A37110,
17 issued to Bryan Lawrence Henry, M.D.;
- 18 2. Revoking, suspending or denying approval of Bryan Lawrence Henry, M.D.'s
19 authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 20 3. Ordering Bryan Lawrence Henry, M.D., if placed on probation, to pay the Board the
21 costs of probation monitoring; and
- 22 4. Taking such other and further action as deemed necessary and proper.

23
24 DATED: November 28, 2016


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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